STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-634

September 12, 2001

PUBLIC UTILITIES COMMISSION
Investigation into Area Code Relief

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we adopt the Federal Communications Commission's definitions of the different categories of costs associated with thousand block pooling and find that both shared and carrier-specific costs directly related to pooling are eligible for recovery. We also find that competitive local exchange carriers (CLECs) are free to recover the costs of pooling as they see fit, e.g. rolling them into rates or including a separate line item on the bill. Finally, we find that Maine's incumbent local exchange carriers (ILECs) may seek recovery of the costs associated with pooling through their respective regulatory paradigms.

II. BACKGROUND

On November 4, 1999, we ordered the implementation of thousand block number pooling (TNP) in Maine by June 1, 2000. Since that time, we have worked with the industry, the North American Numbering Plan Administrator (NANPA), NeuStar, Inc., and other interested parties on the many issues relating to pooling, including the implementation schedule, block donations, and cost recovery.[1] On March 22, 2000, the Hearing Examiner requested additional comment on cost recovery issues. On May 25, 2000, we issued an order in this docket which established an allocation method for industry shared costs associated with TNP and required all code holders in Maine to share in those costs. We stated in that Order that we would address the issues of defining the types of costs associated with TNP and cost recovery for incumbent local exchange carriers (ILECs) in a later order.

III. POSITIONS OF THE PARTIES

A. Verizon

Verizon suggests that the Commission define industry-shared costs as all costs which are not carrier-specific and which are incurred in common for the benefit of

[1] A complete procedural history is contained in our May 25, 2000 Order.

all customers. Once industry-shared costs are allocated to an individual carrier, those allocated costs become part of that carrier's carrier-specific costs. Verizon contends that carriers should be allowed to recover all carrier-specific costs in a competitively neutral manner. Verizon notes, however, that while a carrier's portion of the industry-shared costs is easily verifiable, the remaining costs will need to be reviewed more closely by the Commission before they are allowed to be recovered. Finally, Verizon states that a mechanism which allows, but does not require, recovery of combined carrier-specific costs by means of a generic rate adjustment to the ILECs' rates (perhaps by surcharge) is a valid, competitively neutral cost recovery mechanism.

B. WorldCom

WorldCom identifies three costs which should be included as shared industry costs:

1. Number Portability Administration Center (NPAC) costs, including pooling software costs and download charges;

2. NPAC personnel costs to support the Pooling Administrator (PA); and

3. Shared pooling administration costs, including service provider-block application fees.

WorldCom also identifies two types of carrier-specific costs:

1. Costs to modify a carrier's network to accommodate the storage of pooling data; and

2. Costs to enhance carrier administration systems.

WorldCom notes that competitive local exchange carriers (CLECs) should be able to recover their costs in any lawful manner while ILECs should be prohibited from passing their costs onto other carriers through increased access rates. WorldCom takes no position on whether a generic rate adjustment is a proper method for cost recovery.

C. Telephone Association of Maine (TAM)

TAM urges the Commission to define industry-shared costs in the same way the Federal Communication Commission (FCC) does and to include the costs associated with the implementation of local number portability (LNP). TAM argues that individual carrier fees for block applications should be treated as carrier-specific costs because they pertain to the individual carrier as opposed to the supporting infrastructure of the LNP system as a whole.

TAM urges the Commission to allow ILECs to recover their costs through monthly end-user charges as the FCC did with LNP costs. TAM suggests that the Commission should first determine what types of costs constitute reasonable carrier-specific costs, based upon costs incurred in other states in the Northeast. The Commission should then review individual carrier costs to ensure they are directly related to "valid carrier-specific activity." Once these costs are established, the Commission should allow full pass through of those costs.

TAM argues that the Commission must provide cost recovery because the FCC required it to do so in its Delegation Order[2] and that the independent telephone companies (ITCs) would not have incurred these costs but for the Commission's Order to implement TNP. TAM further argues that carriers cannot be required to show that, absent rate relief, they would be unable to earn normal returns because requiring such a showing would be contrary to the Delegation Order and outside the scope of the Commission's authority.

D. Office of the Public Advocate

The OPA believes there is no reason for the Commission to define industry-shared costs because such costs are likely either to represent a mitigation of ongoing overearnings or to have a *de minimis* effect on a company's rate of return. The OPA cautions the Commission against allowing pass through of the costs via a "single issue ratemaking" absent extraordinary circumstances. The OPA recommends traditional rate proceedings or alternative regulatory mechanisms as the proper vehicle for any recovery of costs associated with TNP. Indeed, the OPA points out that the FCC's Delegation Order provided that states could use "current cost recovery mechanisms" to recover pooling costs and that the FCC's NRO Order[3] stated that the "competitive neutrality requirement does not require the Commission to ensure that carriers recover all of the costs" associated with TNP nor does it guarantee any particular rate of return. Finally, the OPA claims that the FCC only authorized recovery from other carriers, and not end users.

IV. LEGAL STANDARDS

In its NRO Order, the FCC found that the costs associated with pooling after national pooling begins should not be subject to separations and should be covered under an exclusively federal cost recovery mechanism. NRO Order at ¶ 196. The FCC

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[2] *In the Matter of Maine Public Utilities Commission, Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order (Sept. 28, 1999) *(Delegation Order*).

[3] *In the Matter of Number Resource Optimization*, First Report and Order, CC Docket No. 99-200 (rel. March 31, 2000) (NRO Order).

further found that because implementation and administration of national thousand block pooling will not be effective immediately, states may use their current cost recovery mechanisms to ensure that carriers recover the costs of thousands-block pooling implementation and administration in the meantime. *Id.* at ¶ 197. The FCC specifically found that costs incurred by carriers to implement state-mandated pooling are intrastate costs and should be attributed solely to the state jurisdiction. *Id.*

The FCC also found that any cost recovery mechanism, state or federal, must be competitively neutral, i.e. not give one provider an appreciable cost advantage over another when competing for a specific subscriber and should not have a disparate effect on competing providers' abilities to earn a normal return. *Id.* at ¶199. The FCC also concluded that competitive neutrality does not require the FCC (or, presumably, a state commission) to ensure that carriers recover all costs associated with implementing pooling. *Id.* at ¶ 200.

With regard to defining each of the cost categories, the FCC adopted three categories:

(1) shared industry costs – costs incurred by the industry as a whole, including administration costs and enhancements to the number portability regional database;

(2) carrier-specific costs directly related to pooling – costs incurred by individual carriers to enhance their SCP, LSMS, SOA, and OSS systems; and

(3) carrier-specific costs not directly related to pooling – costs incurred by individual carriers that are only incidental to the implementation of pooling.

The FCC concluded that industry-shared costs and carrier-specific costs directly related to pooling should be recoverable, while carrier-specific costs not directly related should not be recoverable. *Id.* at ¶¶ 206-207. The FCC found that industry-shared costs should be recovered from all classes of carriers through the NANPA formula which is now used to recover number portability costs. *Id.* For carrier-specific costs directly related to pooling, the FCC found that each carrier must bear and recover these costs. Order at ¶ 209. While the FCC had tentatively concluded in its Notice of Proposed Rulemaking that ILECs and other price-cap LECs should not be able to recover their costs through a federal charge on end users but instead use other cost recovery mechanisms, in its Order it found that commenters had not submitted sufficient information relating to the amount of the costs for the FCC to make a final determination. *Id.* at ¶ 212.

V. DECISION

A. Definitions of Pooling Costs

We adopt the FCC's findings regarding competitive neutrality and the FCC's definitions of the categories of costs, as set forth above.[4]

B. Cost Recovery By ILECs

We also agree with the FCC's conclusion that competitive neutrality does not require the Commission to ensure that every dollar expended for pooling be recovered. As discussed more fully below, we find that that CLECs are free to recover their costs in any way they deem appropriate while ILECs may seek recovery through traditional measures, i.e., rate cases or under the terms of an AFOR or other stipulation.

First, as the parties are aware, pooling was implemented on June 1, 2000. The latest official NANPA exhaust projections indicate that the exhaust date for area code 207 has moved out from 2002 until 2005. Commission staff believes, after undertaking its own analysis based on consideration of Maine-specific information, that a more accurate exhaust date would be 2010 or later. Because pooling has enabled us to successfully avoid the need for a second area code, all carriers in Maine, including the ILECs, have avoided the millions of dollars of costs associated with implementing a new area code.

Generally, the costs associated with implementing a new area code are absorbed by carriers, including ILECs, as a cost of doing business – there is no special cost recovery associated with implementing a new area code. Thus, if Maine had implemented a second area code, as suggested by the industry, Verizon and the independent telephone companies would not have been entitled to any special cost recovery mechanism for costs associated with implementing the new area code. The costs would have been addressed under the terms of Verizon's AFOR or, for the ITCs, in a rate case and/or under the terms of the access rate case stipulations. Thus, we believe that it is appropriate to treat any costs associated with pooling in the same way we would have treated costs associated with implementing a new NPA – under the

[4]The one issue raised in this proceeding but not addressed specifically by the FCC is whether individual carrier block application fees should be treated as industry-shared costs, as WorldCom contends, or as carrier-specific costs directly related to pooling, as TAM contends. We understand that the industry has resolved this issue on its own through changes to the contract between the industry and the pooling administrator. Accordingly, no decision on this issue is necessary.

terms of Verizon's AFOR or through an ITC's rate case.[5]

In addition, we agree with the OPA that neither the FCC's Delegation Order nor the NRO Order require the Commission to provide for recovery of pooling costs through special rates. The NRO Order specifically states, "Until national thousand blocks pooling is implemented and a federal cost recovery mechanism authorized, states may use their current cost recovery mechanisms..." Order at ¶ 197. The Delegation Order requires us to recover the costs in a competitively neutral manner but does not specify the method of recovery. Delegation Order at ¶ 35.

TAM's arguments that the Commission must provide a new, specific cost recovery mechanism because ILECs would not have incurred these costs but for the Commission's orders does not directly address the issue. We issue many orders that affect ILEC's costs without providing a specific cost recovery mechanism for each decision. All parties understand that each of the ILECs has a regulatory mechanism available to it to seek recovery of costs. TAM's further argument that ILECs cannot be required to recover pooling costs through a rate case has no support in the language of the Delegation Order, the language of the NRO Order, or Maine law.

We note that the FCC still has not resolved federal cost recovery issues. It has, however, selected a national pooling administrator and thus national pooling is expected to begin in March 2002. Maine's pooling trial will be transitioned to national pooling sometime thereafter. After the transition, all pooling costs associated with pooling in Maine will be recovered through the federal cost recovery mechanism established by the FCC. Thus, the cost recovery mechanism established in this Order will govern the costs of pooling incurred from November 1999 through the date national pooling begins in Maine.

VI. CONCLUSION

In summary, we conclude that CLECs are free to recover the costs of pooling as they see fit, i.e. rolling them into rates or including a separate line item on the bill. Maine's ILECs may seek recovery of any costs associated with pooling through their respective regulatory paradigms. If and when an ILEC seeks such cost recovery, the Commission will review each of the costs and only consider allowing recovery for those costs directly related to pooling as defined by the FCC.

[5] We note that at this time, the only costs assessed to independent telephone companies associated with Maine-specific pooling relate to setting up the pool. Individual company costs range from $50 to $1300, amounts which would likely have no impact on a company's overall rate of return or trigger the exogenous cost provisions of the access rate case stipulations.

Dated at Augusta, Maine, this 12th day of September, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.